APPENDIX "A"

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Alcoholic Beverage Control
Appeals Board

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Accusation against	) AB-2646) File No. 48430;) Reg. No. 8125
SAMSON'S MARKET COMPANY, INC. dba Samson's 6656 Sunset Boulevard Los Angeles	) Time & Place of Hearing:) December 15, 1967, @ 10 a.m. 1525 South Broadway - Los Angeles, California
off-sale general (retail package) license	) For Department:
Respondent-Licensee	) Honorable Thomas Lynch, Attorney General
under the Alcoholic Beverage Control Act.	) Henry Ullerich - Deputy Attorney General

For Appellant:
Lawrence Teplin, Esq.

This is an appeal by Samson's Market Co., Inc., from a decision of the Department of Alcoholic Beverage Control in which it was

determined that appellant violated section 24752, Alcoholic Beverage Control Act (selling below fair trade price); section 24755 of said act (selling distilled spirits for less than the effective minimum retail prices); rule 99 of title 4, California Administrative Code (minimum retail price schedules); and article XX, section 22 of the California Constitution (conduct contrary to public welfare or morals). Upon its determination that the above violations constituted cause for discipline, the department imposed a penalty revoking appellant's off-sale general license.

Appellant's appeal is based upon the grounds:

> "(a) Whether the department has proceeded without, or in excess of, its jurisdiction.
>
> "(b) Whether the department has proceeded in the manner required by law.
>
> "(c) Whether the decision is supported by the findings.
>
> "(d) Whether the findings are supported by substantial evidence in the light of the whole record.
>
> "(e) Whether there is relevant evidence, which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before

the department."

In addition, appellant raises, by way of argument, issues related to due process and to the interpretation of state statutes and the California Constitution.

The decision of the department contains the following:

"FINDINGS OF FACT

"COUNT I

"On or about September 10, 1965, respondent-licensee, then being licensed under the above-designated off-sale general license at the above-designated premises, through an agent or employee known as 'Jack', did offer for sale and did sell to Gary Stucker, alcoholic beverages in sizes, in quantities, and at the retail price more particularly set forth below. Patterson's California Beverage Gazetteer for September, 1965, set forth the minimum retail price as $10.54 plus tax for said alcoholic beverages.

"Quantity	Size	Brand Name	Sale Price
2	4/5 quarts	Early Times .86 proof Kentucky Straight Bourbon Whiskey	$9.87 including tax

"COUNT II

"On or about September 21, 1965, respondent-licensee, then being licensed under the above-designated off-sale general license at the above-designated premises, through an agent or an employee whose name is unknown, described as being male Caucasian, 50-55 years of age, approximately 5 feet 9 inches tall, weighing approximately 150 pounds, with black hair streaked with grey and wearing glasses, did offer for sale and did sell to Herbert Steinberg alcoholic beverages in sizes, in quantities, and at retail price more particularly set forth below. Patterson's California Beverage Gazetteer for September, 1965, set forth the minimum retail price as $14.97 plus tax for said alcoholic beverages.

"Quantity	Size	Brand Name	Sale Price
3	4/5 quarts	Antique Kentucky Straight Bourbon Whiskey	$13.25 including tax

"COUNT III

"On or about October 8, 1965, respondent-licensee, then being licensed under the above-designated off-sale general license at the above-designated premises, through an agent or employee known as 'John', did offer for sale and did sell to Richard Cottingham alcoholic beverages in sizes, in quantities, and at retail price more particularly set forth below. Patterson's California Beverage Gazetteer for October, 1965, set forth the minimum retail price as $15.81 plus tax for said alcoholic beverage.

"Quantity	Size	Brand Name	Sale Price
3	4/5 quarts	Early Times 86 proof Kentucky Straight Bourbon Whiskey	$13.98 including tax

"Patterson's California Beverage Gazetteer is distributed to off-sale retail liquor establishments in the Southern California trading area solely upon paid subscription thereto.

"FINDINGS AS TO PREVIOUS RECORD

"Licensed as above 1-4-60 to date. Disciplinary action: Reg.

13045, 3-2-60, 24750 & 99(f), 30 days susp., op. 4-1-60. Reg. 13273, 3-29-60, 25503(c), 25660, 24200(b), dismissed 7-10-61.

"DETERMINATION OF ISSUES PRESENTED

"Grounds for suspension or revocation were established in that respondent violated or permitted a violation of Sections 24752 and 24755 of the Business and Professions Code, Rule 99 of Title 4, California Administrative Code and Article XX, Section 22 of the State Constitution.

"ORDER

"The license is revoked."

The function of this board, an appellate administrative tribunal charged with reviewing decisions of the department, is well established. Both the Constitution (article XX, section 22) and applicable statutes (sections 23084, 23085, Alcoholic Beverage Control Act) indicate that our reviewing functions are limited. (Martin v. Alcoholic Bev. Control Appeals Bd. & Richards, 52 Cal. 2d 238, 340 P. 2d 1.)

The scope of review on the question of whether the department's decision is supported by substantial evidence in the light of the whole record is governed by the "substantial evidence

rule." That is, if the record contains any evidence that may be regarded as supporting the department's position, then the department's decision must be affirmed. We must consider the evidence in the light most favorable to the department's findings, indulging in all legitimate and reasonable inferences in support thereof. (Marcucci v. State Bd. of Equal., 138 Cal. App. 2d 605, 292 P. 2d 264.)

Preliminarily, it should be noted that the department's accusation alleged grounds for suspension or revocation of appellant's license under article XX, section 22, State Constitution, and section 24200(a), Alcoholic Beverage Control Act, counts I, II, and III; additional grounds under sections 24200(a) and (b) of the Alcoholic Beverage Control Act were alleged as to rule 99, counts I, II, and III. Prior to hearing on the merits before a hearing officer from the Office of Administrative Procedure, appellant's motion to strike section 24752 as a ground for suspension or revocation of the license was granted. (Proposed Decision, File 21-48430, page 1.)

The department, under authority of section 11517(c), Administrative Procedure Act, rejected the hearing officer's proposed decision and on July 1, 1966, issued its decision which included, under determination of issues, a violation of section 24752 as grounds for suspension or revocation. (Department's decision, File 48430, page 2.)

Heretofore, the department and the appeals

board have acknowledged that section 24752 is a remedial statute only and that the Legislature in enacting section 24752 did not intend that the department enforce the provisions of this section. (Department decisions, re David and Rose Canter, File 58542, Reg. 2807, AB-2268; and Westside Market, Inc., File 40590, Reg. 2879, AB-2308.)

The granting of appellant's motion as to section 24752 was not contested by the department and the record reveals no evidence which might support a determination of a violation of section 24752. Consequently, any finding based upon this section is in error. However, in reviewing the circumstances, this board is of the opinion that the error, being clerical in nature, is harmless and in no way prejudices appellant.

The instant case is the first decision of this board subsequent to the appellate court decision of Reimel v. Alcoholic Bev. Control Appeals Bd., et al., 256 A. C. A. 784, 64 Cal. Rptr. 26, which involves a number of fair trade issues, particularly proper filing and publishing of minimum resale prices of distilled spirits in accordance with section 24755 of the Alcoholic Beverage Control Act and rule 99 of title 4, California Administrative Code. This issue of publication has now been settled by the Reimel decision, supra. In upholding the department's decision, the court stated:

> "We conclude that the Department's determination that the words

in question, in the context of the Act and its section 24755, indicated a legislative intent that the price schedules be published in a manner most likely to give notice to the affected licensees is reasonable and correct. This interpretation gives effect to each of the words and phrases under consideration. It brings them to a degree of harmony with each other not otherwise possible. And it is consistent with the usual meaning given the word 'published' by the Legislature and by the courts.

"The Department's interpretation is in accord with the general legislative practice of prescribing publication in such a manner as is best designed to give notice to persons concerned. And it imposes no hardship upon the individual licensee who is under an affirmative duty to conduct his business in accordance with law. (See Morell v. Department of Alcoholic Beverage Control, supra, 204 Cal. App. 2d 504, 514; Munro v. Alcoholic Beverage Control Appeals Bd., 181 Cal. App. 2d 162, 164; Cooper v. State Board of Equalization, 137 Cal. App. 2d 672, 678.) . . ."

* * *

". . . Accordingly, the record

before us discloses that the Department did sustain its burden of proving publication of minimum retail price schedules as required by section 24755."

Judicial opinions rendered by the Court of Appeal are controlling upon the Alcoholic Beverage Control Appeals Board.

We have reviewed the record certified to the board by the department in the light of the above Court of Appeal decision, and conclude that there is substantial evidence to support the department's findings and that the findings support the department's decision.

We also conclude that appellant's arguments regarding constitutionality, statutory interpretation, and denial of due process are disposed of by previous decisions rendered by the California Supreme Court: Wilke & Holzheiser v. Dept. of Alcoholic Bev. Control, 65 Cal. 2d 385, 55 Cal. Rptr. 23; Allied Properties v. Dept. of Alcoholic Bev. Control, 53 Cal. 2d 141, 346 P. 2d 737; and by the recent Court of Appeal's decision, Reimel v. Alcoholic Bev. Control Appeals Bd., et al., supra, 256 A. C. A. 784, 64 Cal. Rptr. 26.

We now turn to the question of jurisdiction. In 1965 the Legislature added section 24755. 1 to the Alcoholic Beverage Control Act (Business and Professions Code). This statute became effective on September 17, 1965, and provided for the imposition of mandatory fines on a

graduated basis for violations of fair trade regulations. Appellant argues that the department is limited to section 24755.1 exclusively in determining the type and extent of discipline to be imposed on licensees who violate section 24755 of the Alcoholic Beverage Control Act.

The department argues that section 24755.1 does not limit the department's power because article XX, section 22 of the State Constitution vests the department with discretion to suspend or revoke a license when it determines for good cause that continuance of the license would be contrary to public welfare or morals. Moreover, the department maintains that insofar as section 24755.1 would impair or defeat discretionary powers granted by the Constitution, the section is invalid.

Since count I concerns a violation occurring prior to the effective date of section 24755.1, the issue posed is one of retroactive application of the statute. The court in Wilke & Holzheiser v. Dept. of Alcoholic Bev. Control, supra, 65 Cal. 2d 385, 55 Cal. Rptr. 23, denied a similar request and in Reimel v. Alcoholic Bev. Control Appeals Bd., et al., supra, 256 A.C.A. 784, 64 Cal. Rptr. 26, the court declared that the former Supreme Court decision precluded any further consideration of the issue of retroactively. However, the court allowed that the department could elect to review penalty assessments before they are placed in effect, citing section 25211 of the Alcoholic Beverage Control Act.

The remaining counts of the instant case,

counts II and III, concern violations that occurred subsequent to the effective date of section 24755.1 and, therefore, present the question of whether the department has exceeded its jurisdiction by electing to impose a penalty of revocation, rather than a monetary penalty, for violation of section 24755 of the Alcoholic Beverage Control Act; rule 99 of title 4, California Administrative Code; and article XX, section 22 of the State Constitution.

The Supreme Court preferred not to espouse an interpretation which would invite constitutional difficulties unnecessarily when it decided that section 24755.1 did not operate retroactively. (Wilke & Holzheiser v. Dept. of Alcoholic Bev. Control, supra, 65 Cal.2d 385, 55 Cal.Rptr. 23.). Nevertheless, the court commented on the issue as follows:

> "Prior to the enactment of section 24755.1 (citation omitted), violation of the retail price maintenance provisions of the Alcoholic Beverage Control Act subjected the transgressor not only to the discretionary suspension or revocation of his license (Bus. & Prof. Code, sec. 24200) but also to punishment as a misdemeanant by a fine of not more than $500 and/or a county jail term of not more than six months (Bus. & Prof. Code, sec. 25617). By enacting section 24755.1 the Legislature replaced this method of enforcement with a system of mandatory

fines leviable by the Department of Alcoholic Beverage Control in the amount of $250 for the first illegal sale and $1,000 for each subsequent such sale in any three-year period. Pending any appeal from the imposition of a fine, the new section required a licensee to pay under protest a fine, which was recoverable with interest if the appeal succeeded, or to execute a surety bond in the amount of the fine. The failure to perform either undertaking within 30 days provoked an automatic suspension of the license pending performance.

"Article XX, section 22, of the California Constitution empowers the Department of Alcoholic Beverage Control 'in its discretion' to 'deny, suspend or revoke any specific alcoholic beverage license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals, . . .' At the same time, section 22 empowers the Legislature to 'provide for the issuance of all types of [alcoholic beverage] licenses' and gives to the Department of Alcoholic Beverage Control 'the exclusive power . . . in accordance with laws enacted by the Legislature, to license the . . . sale of alcoholic beverages. . . .'

(Italics added.)

"If we were to hold section 24755.1 applicable to the judgments here on appeal, we would be compelled to decide, first, whether that section constitutes an invalid limitation upon the power vested in the department by article XX insofar as it eliminates the department's discretionary power to suspend or revoke a license for violation of the retail price maintenance provisions; and, second, whether that section constitutes an invalid extension of the power vested in the department by article XX insofar as it adds the power to impose mandatory fines for violation of the retail price maintenance provisions. 18/ . . ."

"18/ No fines are directly involved in these proceedings, but the provisions of section 24755.1 are clearly inseverable, and if we were to decide that article XX invalidates the provision requiring the department to impose fines, then we should be compelled to conclude, as a matter of legislative interpretation, that all of section 24755.1, including its prohibition against license suspension or revocation, is inoperative."

This board has reviewed the record and the authorities favoring the view points of appellant and respondent and concludes that section 24755.1 does not displace or render ineffective the discretion which the Constitution reposes in the department. Consequently, the department did not exceed its jurisdiction by failing to apply the penalty provisions of section 24755.1.

In view of the foregoing, the decision of the Department of Alcoholic Beverage Control in the present proceeding is hereby affirmed.

DONALD R. WAGNER,
CHAIRMAN
ALCOHOLIC BEVERAGE
CONTROL APPEALS BOARD

We Concur:
Robert I. Tuttle
Adrienne Sausset

Sacramento, California
March 11, 1968

APPENDIX "B"

CALIFORNIA BUSINESS AND PROFESSIONS CODE

§24755. Minimum retail price schedule; filing; amendments; loss leader sales; rejection of noncomplying schedules; exempt sales. (a) No package of distilled spirits which bears the brand, trademark or name of the owner or person in control shall be sold at retail in this State for consumption off the license premises unless a minimum retail price for such package first shall have been filed with the department in accordance with the provisions of this section.

(b) A price for each of such packages shall be in a minimum retail price schedule setting forth with respect to each package the exact brand, trademark or name, capacity, and type of package, type of distilled spirits, age and proof, where stated on the label, and the minimum selling price at retail. The price for any such package may be filed separately and differently for the trading area of Southern California and the trading area of Northern California. The trading area of Southern California shall consist of the Counties of Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Bernardino, Imperial and San Diego. The Northern California trading area shall consist of the other counties of the State. No more than one person shall file a schedule for the same package for the same trading

area. Any person filing such schedule shall cause such schedule to be published in a manner which will result in each retailer affected by such schedule being advised of the contents of such schedule prior to the effective date thereof.

(c) Such schedule shall be filed by (1) the owner of the brand, if licensed in the State; (2) any licensee, other than a retailer, selling the brand and who is authorized in writing by the brand owner to file such schedule if the brand owner is not licensed in this State; (3) a manufacturer or rectifier licensed in this State and who bottles under the brand owned by a retailer; or (4) any licensee with the approval of the department, if the owner of the brand does not file or is unable to file a schedule or authorize a licensee other than a retailer to file such schedule.

(d) Schedules filed pursuant to this section may be amended, changed, or modified by filing such amendments, change, or modification with the department on or before the 15th day of any month to take effect on the first day of the second succeeding calendar month; except that prices filed for a brand, size, or type not included in a schedule in effect at the time such brand, size, or type is filed, and prices filed to meet the price of a competitive brand, may be filed on or before the 15th day of any month to take effect on the first day of the following month. For the purpose of this

section, a competitive brand shall mean any brand of the same type of distilled spirits having a filed selling price at retail within one dollar($1) per gallon of the brand for which a competitive price is filed.

No retailer shall sell any package of distilled spirits as a loss leader. "Loss leader," as used in this section, means a sale below cost as such cost is defined in Sections 17026 to 17029, inclusive, of this code, except that a sale below cost made under the provisions of Section 17050 of this code shall not be deemed a loss leader sale.

The department shall reject any price schedule which does not comply with this subdivision.

(e) No offsale licensee shall sell any package of distilled spirits at any price less than the effective filed price of such package unless written permission is granted by the department, for good cause shown and for reasons not inconsistent with this division.

(f) The provisions of this section shall not apply to:

(1) A closeout sale made in good faith and approved by the department when the following conditions exist: (i) the stock of distilled spirits sought to be closed out has

been in this State, either in the possession of the vendor who sold it to the retailer or in the possession of the retailer who seeks to close out the brand, for a period of not less than six months; (ii) the stock of distilled spirits to be closed out was not brought into this State for the purpose of offering it, or any part of it, at a closeout sale; (iii) at least 10 days prior to filing a request with the department for approval to sell the stock at a closeout sale, the retailer had offered to return the distilled spirits, at his original invoice cost, to both the vendors from whom he purchased them or to his successor and to the licensee who filed the minimum price schedule under the provisions of this section; (iv) such offer of return was not accepted.

At the place of any closeout sale and upon any package of distilled spirits to be so sold and in any advertisement in connection therewith, public notice shall be given of the sale as a closeout sale. Following the conclusion of a closeout sale, the retailer who conducted such sale shall not sell the same brands of distilled spirits for a period of at least one year.

(2) Sales made with the approval of the department when the distilled spirits or the package is damaged or deteriorated in quality and notice of this fact is given to the public at the place of any such sale and upon the package offered for sale and in any advertisement in connection therewith.

(3) Sales made by any officer acting under the orders of any court.

(g) A minimum retail price schedule containing a minimum retail price for each package of any brand of beer may be filed under the provisions of this chapter by the person in control of such brand and when so filed, the provisions of this chapter and any rules adopted by the department for the administration of the provisions of this chapter shall apply to the sale of packages of such brand of beer. (Added Stats. 1961, c. 635, p. 1835, § 4.)

99. Minimum Retail Price Schedules. (a) Posting of Minimum Retail Price Required. No off-sale licensee shall sell any package of distilled spirits at a price less than the effective minimum retail price of such package filed with the department, unless written permission is granted by the department for good cause shown and for reasons not inconsistent with the law.

The licensed owner or person in control of a brand, trade mark or name appearing on a package of distilled spirits which is to be sold for consumption off the licensed premises in California must file a "Distilled Spirits Minimum Retail Price Schedule" containing the minimum bottle and case prices to consumers for every distilled spirits item carrying that brand, trade mark or name.

(b) Brand Defined. The word "brand" as used herein means "brand, trade mark, label or name", and if an additional secondary name or a different form of label is used, each will be considered to be a separate brand.

(c) Distilled Spirits Item Defined. "Distilled spirits item" as used herein means a distilled spirits package that differs from all other distilled spirits in addition to its brand, as defined in (b) above, in any one of the following categories: (1) Type of distilled spirits including type of bottling (in

bond or not in bond), and type of blend (blend of straight whiskeys or spirits blend); (2) Percentage of Straight Whiskey; (3) Age, if shown on the label; (4) Proof; (5) Origin (domestic or imported); (6) Bottle size; and (7) Number of bottles in a case.

When a container other than the normal container for a brand is used as in the case of a decanter, higher minimum retail prices must be established to reflect any additional cost involved.

(d) Distilled Spirits Sold "On-Sale" Only. If a particular item is labeled to indicate that it is intended for sale to and for dispensing by on-sale retailers only (such as "bar package", "for on-sale only"), the minimum retail price thereof need not be filed. However, if any sale for off-sale consumption of such item should be made, the licensee making such sale will have violated the law.

(e) Who Files Minimum Retail Price Schedules. Only one licensee is permitted to file a "minimum retail price schedule" containing the price for the same item for the same trading area. However, different prices may be filed in the Northern and Southern trading areas.

This means that (1) the owner of the brand or the corporate subsidiary who exclusively markets the products thereof and so is the controller of the brand, if licensed in California, if other than a retailer, must file;

or (2) if the owner of the brand is not licensed in California and has no corporate subsidiary marketing in California, any licensee, other than a retailer, authorized by him in writing must file, such as a wholesaler or importer authorized by an out-of-State or out-of-country brand owner; or (3) if the brand is owned by a retailer, the California-licensed manufacturer or rectifier who bottles an item of distilled spirits under that brand must file for the item; or (4) if none of the three situations above apply and the brand is owned by a retailer, the importing wholesaler must file. If none of the three situations above apply and the brand is not owned by a retailer, then any licensee, other than a retailer, who secures the approval of the department must file.

(f) Price Schedule Sheets to be Filed. Four copies of a "Distilled Spirits Minimum Retail Price Schedule" on a form prescribed by the department must be filed with the department, 1215 O Street, P. O. Box 1139, Sacramento 5, and one copy retained by the licensee in his office for inspection. The "Minimum Retail Price Schedule" may be printed, typewritten or otherwise duplicated on 16 or 20 pound paper on a format and size prescribed by the department and must show the form number "ABC 705" in the lower left-hand corner of the face of the sheet. All information called for on the form sheet must be supplied. A separate set of "Price Schedules" must be made originally, or if added later as a new item, for every different type of distilled spirits, and if that type has

different categories as defined in (2), (3), (4) and (5) in the definition of "Distilled Spirits Item" in (c) above, a separate set must be made for each such difference. Each schedule must contain every bottle size (6) and every size of case (7) in which that brand, type, etc., will be sold. When a new bottle size or new size case is to be sold, or the price of any size of bottle or size of case already on file is to be changed either independently or to meet the price of a competitive brand, new sets of price schedules, in quadruplicate, must be filed to replace those on file and must also include all the information that was on the superseded schedule. Both minimum retail bottle price and minimum retail case prices covering all case sizes must be shown on the price schedules for each size and type.

(g) Filing Dates; New Item. A set of original schedules for new items must be filed on or before the close of business of the fifteenth day of any calendar month to take effect on the first day of the following month, provided, however, the price of such new item is published on or before the aforesaid effective date.

(h) Change of Minimum Retail Price on File. A set of replacement schedules must be filed on or before the close of business of the fifteenth day of any calendar month, to be effective on the first day of the second succeeding month; provided, however, the changed price is published on or before the

aforesaid effective date.

(i) Change in Price of an Item to Meet Price of Competitive Brand. A set of replacement schedules for competitive items must be filed on or before the close of business of the fifteenth day of any calendar month, to be effective on the first day of the following month; provided, however, such price change is published on or before the aforesaid effective date.

A competitive brand is a brand of the same type of distilled spirits as the brand for which a change in price is being filed and for which at the time of filing there is on file a "Price Schedule" sheet filed by some other licensee showing a minimum retail price for the competitive brand item within one dollar per gallon of the price being charged, and proportionately for smaller sizes. The same type of distilled spirits means one identical as to categories (1) and (5) in the definition of "Distilled Spirits Item" in (c) above; the price change involved must apply to the identical item indicated in categories (6) and (7).

If a price is filed to meet the price of a competitive brand, the price so filed shall be the same as the price which is being met.

(j) **Filing Date Exception.** Whenever the fifteenth day of any month falls on Saturday, Sunday or a legal holiday, the price schedules required to be filed may be filed not later

than the close of business the next business day.

(k) Publication. The person filing minimum retail price schedules shall cause prices for all items on every original price schedule and of every change of price or new price on every replacement price schedule to be published in a trade journal of general circulation in the trading areas affected on or before the effective date thereof. Publication of minimum retail prices for a brand sold only to a single retailer may be accomplished by the mailing of such price schedules by the importer, manufacturer, manufacturer's agent, rectifier or wholesaler, and any amendments thereto, to the retail licensee affected thereby. The schedule shall be deposited in the United States Post Office on or before the date or dates required for publication of price schedules as prescribed above in this paragraph, and the mailing shall be complete at the time of such deposit. A record of each such notification should be retained in the file of the posting licensee for three years.

(l) Deliveries. No manufacturer, wholesaler or rectifier shall make deliveries of any particular item of distilled spirits to any off-sale retail licensee before a "Price Schedule" with that item thereon has been filed with the department; thereafter he may make deliveries thereof within such time before the price becomes effective as would give the retailer reasonable time to get the

item ready for sale upon the price becoming effective.

(m) Withdrawal of Item from Price Schedule. No item may be deleted from a replacement "Price Schedule" once it has been filed on an original schedule until the department authorizes such deletion when the department makes a finding that the item is carried in wholesale and off-sale retail inventories in only very small quantities.

(n) Transfer of Price Filing Obligation. When, for any reason, price filing responsibility for any item is transferred from one licensee to another, the price schedules of the licensee then on file will continue in effect until replaced by an effective new filing by the successor which will be considered to be a schedule already on file.

(o) Tax Increase or Government Order. Pursuant to an order issued by the department, any price schedule may be changed at any time to reflect changes in federal or state excise taxes on distilled spirits or to comply with the requirements of any order issued by the federal government and relating to price control.

(p) Sales as Loss Leaders Prohibited. All distilled spirits minimum retail prices filed under the provisions of Section 24755 shall comply with all the provisions of said section including the provisions of subsection

(d) which prohibits the sale of distilled spirits as a loss leader. Any licensee filing distilled spirits minimum retail prices below the purchasing retailer's cost of acquisition plus said retailer's cost of doing business as referred to in said subsection shall produce evidence to show that such price was filed to meet the legal price of a competitor selling the same article or product.

NOTE: Authority cited for amendment filed 10-2-56: Sections 24757 and 25750, Business and Professions Code; Section 22, Article XX, California Constitution. Issuing agency: Department of Alcoholic Beverage Control. Additional authority cited: Sections 24749, 24750, 24751, 24752 and 25752, Business and Professions Code.

History: 1. Repealer and new section filed 9-12-61; designated effective 10-15-61. (Register 61, No. 18). For prior history, see Register 60, No. 16.

APPENDIX "D"

LAW OFFICES OF JACQUES LESLIE
9255 Sunset Boulevard
Los Angeles, California 90069

Telephone: CR 54424
BR 23212

Attorneys for Respondent

BEFORE THE
DEPARTMENT OF
ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA
P. O. BOX 1139
SACRAMENTO 95805

In the Matter of the Accusation Against	File 48430 Reg. 8125
SAMSON MARKET COMPANY 6656 Sunset Boulevard Los Angeles, California Off-Sale General License Respondent.	NOTICE OF DEFENSE UNDER SECTION 11505 OF THE GOVERNMENT CODE.
License Under the Alcoholic Beverage Act	REQUEST FOR HEARING

TO: THE DEPARTMENT OF
ALCOHOLIC BEVERAGE CONTROL:

The undersigned Respondent, named in the above entitled proceeding, hereby acknowledges receipt of a copy of the Accusation and the statement that a hearing may be requested in said proceeding by filing a Notice of Defense as provided in Section 11506 of the Government Code within fifteen (15) days after the service upon the undersigned of said Accusation. A hearing is hereby requested in said proceeding to offer defense to the charges contained in said Accusation.

Attached hereto is Respondent's NOTICE OF DEFENSE as provided in Section 11506, Government Code.

DATED: January 14, 1966.

Respondent: SAMSON MARKET COMPANY

LAW OFFICES OF
JACQUES LESLIE.

BY /s/ Daniel A. Schiffer
Daniel A. Schiffer
Attorneys for Respondent
9255 Sunset Boulevard-Suite 920
Los Angeles, California 90069

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BR 23212

Attorneys for Respondent

BEFORE THE
DEPARTMENT OF
ALCOHOLIC BEVERAGE CONTROL
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P. O. BOX 1139
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In the Matter of the Accusation Against	)	File 48430 Reg. 8125
SAMSON MARKET COMPANY 6656 Sunset Boulevard Los Angeles, California Off-Sale General License Respondent. License Under the Alcoholic Beverage Act	)	NOTICE OF DEFENSE UNDER SECTION 11505 OF THE GOVERNMENT CODE.

I. OBJECTIONS

Respondent objects to the above entitled and numbered Accusation and to each and every allegation in each of the counts thereof,

upon the following grounds:

1. Respondent objects thereto upon the ground that the same does not state acts or omissions upon which the agency may proceed.

2. Respondent objects to the form of the Accusation on the ground that it is so indefinite that Respondent cannot identify each transaction or prepare its defenses thereto.

3. Respondent objects to the form of the Accusation on the ground that it is so uncertain that Respondent cannot identify each transaction or prepare its defenses thereto.

II. AFFIRMATIVE DEFENSES

Respondent, by way of Affirmative Defenses, alleges:

1. that the said proceeding herein violates its rights under the California Constitution and the Constitution of the United States, and, more particularly, with respect to its right to equal protection under the laws of said jurisdictions, its right to due process as guaranteed by each of said Constitutions, and further that the said proceeding is oppressive and burdensome and without sanction of law in that the Department has exceeded its authority under the police powers of the state and is without jurisdiction pur-

suant to the constitutional grant of power and jurisdiction to said Department.

2. that the Alcoholic Beverage Control Act and the rules and regulations adopted pursuant thereto governing Fair Trade, as they are sought to be applied against Respondent, are violative of Respondent's rights under the Constitutions of the United States and of California in that they create arbitrary, unreasonable and preferential legislative and administrative provisions, each of which constitutes special legislation for the use and benefit of the alcoholic beverage vendors to the retailers thereof.

3. that the Alcoholic Beverage Control Act and the rules and regulation adopted pursuant thereto, as they are sought to be applied against Respondent, unlawfully delegate legislative power and thereby are null and void.

4. that the Alcoholic Beverage Control Act and the rules and regulations adopted pursuant thereto, as they are sought to be applied against Respondent, are violative of Article XX, Sec. 22 of the California Constitution.

5. that the Alcoholic Beverage Control Act and the rules and regulations adopted pursuant thereto, as they are sought to be applied against Respondent, constitute an unlawful, improper and excessive exercise of the police powers of this state, in the following respects:

(a) Neither said Act nor the rules and regulations adopted pursuant thereto, as they

are sought to be applied against Respondent, (1) is protective of the safety, welfare, health, peace and morals of the people of this state; (2) eliminates the evils of unlicensed and unlawful sale and disposition of alcoholic beverages; (3) promotes temperance in the use and consumption of alcoholic beverages.

(b) Said rules and regulations violate the Legislative intent as expressed in Sec. 23049 of said Act.

(c) The grounds for disciplinary action asserted by the Department exceed the authority conferred by Article XX, Sec. 22, California Constitution, and Sec. 24200 (a) and (b), Alcoholic Beverage Control Act.

(d) Each of the sections of said Act governing fair trade contracts and price posting, in all respects in which the same are sought to be applied against Respondent, are invalid, unlawful, and void in that they constitute:

(1) An unlawful exercise of police powers.

(2) The denial to Respondent of fundamental due process as required by the Constitution of the United States and of California.

(3) Such arbitrary, capricious, unreasonable and discriminatory classification and regulation of Respondent as a retailer as to

prevent the public from deriving the benefits of price and services competition among retailers while at the same time arbitrarily, capriciously, unreasonably and discriminatorily omitting comparable classification and regulation of suppliers to retailers of alcoholic beverages products as contemplated by Article XX, Sec. 22, California Constitution and legislation enacted in implementation thereof.

(4) An unlawful delegation to private, non-governmental persons and entities of the power to perform governmental duties enjoined upon the state by Article XX, Sec. 22, of the California Constitution.

(5) An unlawful appropriation and expenditure of public funds principally for the use and benefit of private, non-governmental persons and entities for non-public purposes, in violation of the Constitution of this state.

(6) An arbitrary, capricious, unreasonable and discriminatory division of the state into trading areas in violation of Sec. 23049 of the said Act.

6. the Accusation and each allegation in each of the counts therein:

(a) fails to allege facts sufficient to constitute a violation by Respondent of any public law in that neither Sections 24752 nor 24755 nor Rule 99 is applicable to Respondent.

(b) fails to allege reasonable or probable cause for the filing of the Accusation against Respondent for the reasons cited in Paragraph 6, subdivision (a) hereinabove.

7. Article XX, Sec. 22, California Constitution, proscribes the State or any agency thereof from engaging in the manufacture or sale of alcoholic beverages. The sections of Chapter 10 entitled "Alcoholic Beverages Fair Trade Contracts and Price Posting", purporting to empower the State to regulate, maintain and enforce retail prices, are null and void for the reason that an agency of the State, the department herein, serves as an agent of each vendor of alcoholic beverages whose retail price the department seeks to support and maintain.

8. The Accusation is defective in failing to allege Respondent's knowledge or notice of any so-called effective retail price.

9. Section 24200 (b), Business & Professions Code, is vague, ambiguous, unintelligible and incomprehensible.

DATED: January 14, 1966

Respondent: SAMSON MARKET COMPANY

LAW OFFICES OF JACQUES LESLIE

BY: /s/ Daniel A. Schiffer
Daniel A. Schiffer

Attorneys for Respondent
9255 Sunset Boulevard-Suite 920
Los Angeles, California 90069

APPENDIX "E"

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Los Angeles, California 90069

Telephone: CR 54424; BR 23212

Attorneys for Respondent-Licensee

STATE OF CALIFORNIA
THE ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

In the Matter of the Accusation against	File No. 48430 Reg. No. 8125
SAMSON'S MARKET CO., INC. 6656 Sunset Boulevard Los Angeles, California 90028 off-sale general license	
Respondent and Licensee	

TO: THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD AND THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL:

I

Respondent-Licensee, SAMSON'S MARKET CO., INC., by its duly authorized

counsel, LESLIE, SCHIFFER & RUBIN, by DANIEL A. SCHIFFER, hereby appeals from the Decision Under Government Code Section 11517(c) by the Department of Alcoholic Beverage Control, dated July 1, 1966, which did not adopt the Proposed Decision dated March 14, 1966 of Helen L. Gallagher, Hearing Officer, Office of Administrative Procedure, and from the Notice Concerning Proposed Decision dated April 21, 1966.

II

Respondent requests the right to file Opening and Reply Briefs and to appear and argue orally, as permitted by the rules of the Appeals Board.

III

GROUNDS FOR REVIEW

1. The Department has proceeded without jurisdiction;

2. The Department has proceeded in excess of its jurisdiction;

3. The Department has not proceeded in the manner required by law;

4. Neither Department's Notice nor its Decision are supported by the Findings;

5. Department's Findings are not supported by substantial evidence in the light of the whole record;

6. The statutes, rules and regulations sought to be enforced by the Department against Respondent are inapposite and inapplicable; moreover the so-called Alcoholic Beverages Fair Trade Legislation is unconstitutional in the respects urged in Respondent's Notice of Defense filed with the Department and which are hereby incorporated herein by reference, and in the Hearing before the office of Administrative Procedure. Further, Respondent incorporates by reference its Written Argument in Support of Proposed Decision Not Adopted by Department of Alcoholic Beverage Control.

Dated this 19th day of July, 1966 at Los Angeles, California.

SAMSON'S MARKET CO., INC.

BY LESLIE, SCHIFFER & RUBIN

BY _____
Daniel A. Schiffer
Attorneys for Respondent and Licensee
9255 Sunset Boulevard-Suite 920
Los Angeles, California 90069
Telephone: CR 54424; BR 23212

DECLARATION OF SERVICE

STATE OF CALIFORNIA)
: ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 9255 Sunset Boulevard, Los Angeles, California. On June 10, 1968, I served the within JURISDICTIONAL STATEMENT on the persons required to be served by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as follows:

Thomas C. Lynch, Esq.
Attorney General
Lynn Henry Johnson, Esq.
Henry Ullerich, Esq.
Deputy Attorney Generals
600 State Building
Los Angeles, California

Mr. Robert Martin,
Chief Counsel
Alcoholic Beverage
Control Appeals Board
c/o Leo K. Gallant
Senior Counsel
1215 "O" Street
Sacramento, Calif. 95805

Department of Alcoholic Beverage Control
1215 "O" Street
Sacramento, Calif. 95805

SHARLYNE BERYL DAVIES
NOTARY PUBLIC CALIF.
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY

My Commission Expires March 10, 1969

Lawrence Teplin
Lawrence Teplin

Subscribed and sworn to before me
this 10th day of June, 1968.

Sharlyne Beryl Davies
Notary Public, State of California
County of Los Angeles